

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID GONZALEZ,

Defendant.

Case No. 3:11-cr-00055-HDM-CSD

ORDER

In 2012, the defendant, David Gonzalez, was sentenced to 78 months' imprisonment and a lifetime term of supervised release for the crime of receipt of child pornography in violation of 18 U.S.C. § 2252A(a)(2). (ECF No. 63, 65, 67). Supervised release commenced upon the defendant's release from custody on or about December 4, 2015. In 2022, the defendant moved the court to reduce his term of supervised release, a motion the government opposed and the court denied. Less than a year later, the defendant filed a renewed motion for early termination of supervised release (ECF No. 71). The government again opposes (ECF No. 72). The defendant has not replied, and the time for doing so has expired.

At any time after one year of supervised release has expired, and after considering several enumerated 18 U.S.C. § 3553(a) factors, the court may modify or terminate a term of supervised release "if it is satisfied that such action is

1 warranted by the conduct of the defendant released and the
2 interest of justice." 18 U.S.C. § 3583(e).

3 In his motion, the defendant argues that the court
4 improperly considered the severity of his offense when denying
5 his first motion for early termination because § 3583(e) does
6 not allow the court to consider "the need for the sentence
7 imposed . . . to reflect the seriousness of the offense, to
8 promote respect for the law, and to provide just punishment for
9 the offense." 18 U.S.C. § 3553(a)(2)(A).

10 The defendant's argument is without merit. The court did
11 not consider the need for the defendant's sentence to reflect
12 the seriousness of the offense in resolving his motion. Rather,
13 the seriousness of the offense is a factor subsumed within many
14 of the other § 3553(a) factors including, in relevant part,
15 § 3553(a)(1) -- "the nature and circumstances of the offense" -
16 and § 3553(a)(2)(C) - "the need for the sentence imposed . . .
17 to protect the public from further crimes of the defendant." See
18 *United States v. Kay*, 283 Fed. App'x 944, 947-48 (3d Cir. 2008)
19 ("Furthermore, as the United States Courts of Appeals for the
20 Second and Sixth Circuits have already held, the consideration
21 of whether the sentence reflects the seriousness of an
22 offender's crime is not limited to § 3553(a)(2)(A), but is
23 expressed redundantly in the other factors courts are required
24 to consider under § 3583(e)."); *United States v. Frezzell*, 2016
25 WL 406268, at *3 (W.D. Pa. Feb. 3, 2016) (unpublished
26 disposition) ("[T]he court considers the seriousness of
27 defendant's conduct under § 3553(a)(1).").

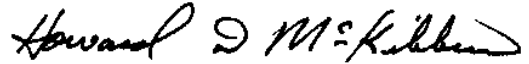
1 The case the defendant cites is not to the contrary. In
2 *Miqbel*, 444 F.3d at 1182, the Ninth Circuit held that "a court
3 may not properly consider a need to 'promote respect for the
4 law,' based on the nature of the underlying criminal offense
5 committed, or on the 'seriousness of the [underlying] offense.'" It
6 did not hold that a court may not consider the nature or
7 severity of the underlying offense at all. Rather, it held only
8 that a court may not consider the need to promote respect for
9 the law in light of those factors. The court did not base its
10 previous denial on the need to promote respect for the law based
11 on the severity of the offense. To the extent the defendant
12 asserts the court erred in its prior order, the argument is
13 rejected.

14 The court has again considered the record and the pleadings
15 on file in this matter and finds that termination of supervised
16 release remains premature. The defendant has been on supervision
17 for less than eight years. The United States Sentencing
18 Guidelines' policy statement specifically recommends lifetime
19 supervision for sex offenses, which include receipt of child
20 pornography in violation of 18 U.S.C. § 2252A. *United States v.*
21 *Daniels*, 541 F.3d 915, 923 (9th Cir. 2008) (citing U.S.S.G. §
22 5D1.2(b)). Further, while the defendant's engagement with
23 supervision, volunteer efforts and charitable contributions are
24 laudable, the court concludes, for the protection of the public,
25 continued supervision is appropriate because of the nature and
26 severity of the crime and because the record reflects that the
27 defendant at one time indicated he had a compulsion to view
28 child pornography for many years and did not believe he could

1 stop. As before, the court concludes that there is continued
2 benefit to the public and the defendant from the department's
3 monitoring of the defendant for pornographic material.
4 Accordingly, the defendant's motion to modify supervised release
5 (ECF No. 71) is DENIED. The denial is without prejudice.

6 IT IS SO ORDERED.

7 DATED: This 6th day of June, 2023.

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10 UNITED STATES DISTRICT JUDGE
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